

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

RONNIE COLE,

Plaintiff,

v.

9:14-CV-0539 (BKS/DEP)

**NEW YORK STATE DEPARTMENT OF CORRECTIONS
AND COMMUNITY SUPERVISION, et al.,**

Defendants.

Appearances:

Ronnie Cole

91-A-9212

Five Points Correctional Facility

Caller Box 119

Romulus, NY 14541

Plaintiff, pro se

Kevin M. Hayden, Esq.

Hon. Eric T. Schneiderman

Office of New York State Attorney General

615 Erie Blvd. West, Suite 102

Syracuse, NY 13204

Attorney for Defendants

Hon. Brenda K. Sannes, United States District Judge:

MEMORANDUM-DECISION AND ORDER

Plaintiff Ronnie Cole, a New York State inmate, commenced this civil rights action asserting claims under 42 U.S.C. § 1983 arising out of his confinement at the Walsh Regional Medical Unit at Mohawk Correctional Facility and Upstate Correctional Facility. In the Amended Complaint, Plaintiff alleges Eighth Amendment excessive force, failure to protect, and medical indifference claims; Fourteenth Amendment due process claims; claims under the

Americans With Disabilities Act, 42 U.S.C. § 12101 et seq.; and New York State negligence claims. Dkt. No. 29. On November 13, 2015, Defendants filed a motion for summary judgment under Fed. R. Civ. P. 56(a). Dkt. No. 45. Plaintiff filed a response in opposition on December 28, 2015. Dkt. No. 54. This matter was referred to United States Magistrate Judge David E. Peebles who, on August 25, 2016, issued a Report and Recommendation recommending that Defendants' motion for summary judgment be granted in part and denied in part. Dkt. No. 58. Magistrate Judge Peebles advised the parties that under 28 U.S.C. § 636(b)(1), they had fourteen days within which to file written objections to the report, and that the failure to object to the report within fourteen days would preclude appellate review. Dkt. No. 58, pp. 100-01. No objections to the Report-Recommendation have been filed.

As no objections to the Report and Recommendation have been filed, and the time for filing objections has expired, the Court reviews the Report and Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 228-29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee's note to 1983 amendment. Having reviewed the Report and Recommendation for clear error and found none, the Report and Recommendation is adopted in its entirety.

For these reasons, it is

ORDERED that the Report and Recommendation (Dkt. No. 58) is **ADOPTED** in its entirety; and it is further

ORDERED that Defendants' motion for summary judgment (Dkt. No. 45) is **GRANTED IN PART AND DENIED IN PART**; and it is further

ORDERED that Plaintiff's claims against Defendants DOCCS, Annucci, Prack, Bullis, Corey, Tousignant, Sharma, Trabout, Mara, Dutch, Peterson, P. Henderson, D. Williamson, J.

Henderson, Danforth, Mandalaywala, Schroyer, Kowalachuk, Smith, and M.

Williamson are **DISMISSED**; and it is further

ORDERED Plaintiff's retaliation claims against Defendants LoRusso and Wagner are **DISMISSED**; and it is further

ORDERED that the Defendants' motion is otherwise **DENIED** in all respects and that the matter will proceed with regard to Plaintiff's excessive force claims against Defendants Durante, Wagner, and LoRusso; retaliation claims against Defendant Durante; supervisory claims against Defendants Judway and Gonyea; and failure to protect claim against Defendant Michaels based upon events occurring at the Walsh Regional Medical Unit; and it is further

ORDERED that the Clerk serve a copy of this Order upon the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: September 26, 2016

A handwritten signature in black ink, reading "Brenda K. Sannes", written over a horizontal line.

Brenda K. Sannes
U.S. District Judge